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The Consumer Ombudsman's Guidelines on Using Claims such as "Climate Neutral" etc. in Marketing

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1 Objective

These Guidelines shall prevent consumers from being misled, and also influence traders to comply with the provisions given in the Marketing Control Act, which the Consumer Ombudsman oversees.¹ The Guidelines shall ensure consistency and equality in the Consumer Ombudsman's procedures, and also provide predictability for traders.

The Guidelines shall contribute to consumers' ability to make conscious and informed climate decisions. As a rule, the Guidelines involve successively more stringent requirements; see section 4.3 below.²

2 The Guidelines' nature, area of application etc.

The Guidelines express how the Consumer Ombudsman will apply the Marketing Control Act to claims such as "climate neutral" etc. in marketing. The Guidelines are not a regulation and are not an exhaustive account.

The Guidelines apply to the use of claims such as "climate neutral" etc. in marketing within all industries. They apply to marketing of both business activities and services/products.³ The requirements given in these Guidelines must be fulfilled for business activities and/or services/products being marketed with such claims.

Claims such as "climate neutral" etc. shall refer to statements, information, symbols, images, labelling systems and so on in marketing which give an impression that the business activities or services/products are climate neutral, carbon neutral, climate balanced etc.

Other climate claims – such as "climate friendly", "low greenhouse gas emissions" etc. – are regulated by the documents mentioned in section 5 below.

A claim which according to its wording gives an impression of climate neutrality may, depending on the circumstances, be judged equivalently to a claim of being "climate friendly" etc., for instance if images and/or symbols give the impression of something more than climate neutrality. The Consumer Ombudsman's General Guidelines on the Use of Environmental and Ethical Claims in Marketing will then apply.

Traders who are in doubt as to whether their marketing is in compliance with the Marketing Control Act may contact the Consumer Ombudsman for guidance. While the Consumer Ombudsman does not have the opportunity

¹ See the Marketing Control Act (MCA), section 34, second paragraph, point One and section 35, first paragraph.

² For example, a trader that in 2010 may call him/herself "climate neutral", cf. section 4 below, may use the same term in subsequent years only if the criteria of section 4 are also then fulfilled. Such a dynamic is in line with the principles of *Kick the Habit: A UN Guide to Climate Neutrality*, 2008.

³ By *product* is meant a good, service, immovable property, right or obligation; see MCA section 5, letter c. Services in the broadest sense are also included in the concept of "product". To avoid misunderstandings, the Consumer Ombudsman has used "service/product" throughout these Guidelines.

to pre-approve marketing, it may provide guidance concerning which requirements apply.⁴

3 Starting point and the Consumer Ombudsman's recommendations

3.1 Perception of the average consumer

Marketing is assessed according to how it will be perceived by a reasonably well-informed and reasonably observant and circumspect average consumer.⁵ Special consideration shall also be given to the immediate perception of the average consumer.⁶

3.2 Documentation duty

Claims in marketing shall be documentable. The documentation shall be available from the advertiser when the marketing occurs; cf. MCA section 3, second paragraph.⁷

For the documentation to have sufficient weight as evidence, it is usually a requirement that the claims can be substantiated by statements or research carried out in a professional manner by neutral authorities with recognised professional competence. The content of the documentation must be suitable for the claims set forth in the marketing.⁸

3.3 The Consumer Ombudsman's recommendation

For the Consumer Ombudsman, there will be less reason for intervention when information about business activities or services/products is given in a specific, neutral and objective way without emphasis on general climate aspects.⁹ The consideration for the consumer will not be as predominant here, because such information is not as likely to mislead the average consumer. The Consumer Ombudsman therefore recommends that climate claims be as specific, neutral and objective as possible. The trader will then face a lower risk of acting in conflict with the provisions of the Marketing Control Act; see section 6 of these Guidelines.

⁴ See Regulation 5 June 2009, No. 588 on the Consumer Ombudsman and Market Council's procedure etc., section 3, second and third point.

⁵ See section 18 of the Preface of the Unfair Commercial Practices Directive, Proposition No. 55 to the Odelsting (2007-2008), pp. 32-35 and the Market Council's Cases No. 08/787 (Ryanair), 08/791 (Bauhaus) and 08/1185 (Skeidar).

⁶ See recent Market Council practice such as the Market Council's Cases No. 28/01 (Lefdal I) and 12/04 (Hafslund).

⁷ For further details, see Proposition No. 55 to the Odelsting (2007-2008), pp. 26-27 and p. 189.

⁸ See Proposition No. 55 to the Odelsting (2007-2008), p. 27. From the environmental area, see the Market Council's Case 25/97 (Monsanto).

⁹ An example of information given in such a specific way: "CO₂ emissions: 114 g/km".

4 Claims such as “climate neutral” etc.

4.1 Starting point

Traders that use claims such as “climate neutral” etc. in marketing must fulfil the criteria in sections 4.2 to 4.6 below.

4.2 Calculation of greenhouse gas emissions

The trader must calculate the emissions of greenhouse gases from the business activity or service/product being marketed. “Greenhouse gases” refers to the six gases included in the Kyoto Protocol.¹⁰

The calculations must be made following scientifically recognised calculation methods. Calculation according to The Greenhouse Gas Protocol¹¹ is sufficient for business activities. For services/products, the best available life cycle analysis must be used.¹²

4.3 Reduction plan and climate accounts

Every other year, the trader must develop a reduction plan for greenhouse gas emissions for the business activity¹³ or service/product being marketed.¹⁴

The reduction shall be measured in relation to the emissions for the calendar year prior to the time of marketing. For business activities or services/products that do not have emissions from the previous calendar year as reference, the reduction shall be measured in relation to the emissions at the time of marketing.

The plan must include measures for reducing greenhouse gas emissions as much as possible at all stages.¹⁵

When it is prepared, the plan must be verified by an impartial third party.

Each year, the trader must also prepare a climate account for the greenhouse gas emissions of the business activity or service/product being marketed. The climate account must be available upon request.

¹⁰ CO₂, CH₄, N₂O, HFK, PFK and SF₆. The five non-CO₂ gases are converted into CO₂ equivalents, in line with the International Panel on Climate Change (IPCC)'s calculations of the Global Warming Potential of the various gases over 100 years, presented in the IPCC Third Assessment Report (2001).

¹¹ See <http://www.ghgprotocol.org/> (last visited 27 November 2009).

¹² See for instance *NS-EN ISO 14040 Environmental management – life cycle assessment – principles and framework* and *NS-EN ISO 14044 Environmental management – life cycle assessment – requirements and guidelines*.

¹³ Either greenhouse gas emissions from the business activity as a whole or per produced unit.

¹⁴ This does not apply to cases in which the reduction potential (see third paragraph) of the business activity or service/product has been exhausted, and this is verified by an impartial third party.

¹⁵ That is, emission reductions which may be carried out proportionally. A specific assessment must be carried out which includes expenses, but in which more extensive expenses may also be deemed necessary.

4.4 Quota purchases

The trader must buy certified quotas to compensate for the business activity or service/product's remaining emissions, that is, the emissions that remain after reductions have been made in line with section 4.3 of these Guidelines. The quotas must have been purchased at the time of marketing.

The quotas must be approved by the UN¹⁶ and/or in accordance with the Gold Standard.¹⁷

The trader must be able to document that the quotas are cancelled and thus cannot be offered for further sale.

4.5 Disclosure

The trader must disclose the method of calculating greenhouse gas emissions,¹⁸ the plans for reducing greenhouse gas emissions, the climate accounts, what proportion of the emissions are compensated for by quota purchases and information about the quotas, including how the quotas are cancelled. This disclosure should occur on the trader's website and possibly in other suitable ways.

4.6 Supplementary information in the marketing

In the context of the marketing claim, reference must be made to where the supplementary information mentioned in section 4.5 above is disclosed.¹⁹

5 Relation to other guidelines etc.

These Guidelines pertain to the use of claims such as "climate neutral" in marketing of business activities and services/products within all industries; see also section 2 above. In addition to these Guidelines, the following documents of relevance to environmental and climate marketing have also been prepared:²⁰

- The Consumer Ombudsman's Briefing Letter on Marketing of Environmental Superiority in the Taxi Industry (6 November 2009)

¹⁶ This applies for instance to quotas from the EU's quota system (EUA) and emission credits from projects under the Green Development Mechanism (CER).

¹⁷ The Gold Standard Registry; see <http://goldstandard.apx.com/> (last visited 27 November 2009).

¹⁸ Including what values are used when the greenhouse gases are weighted to CO₂ equivalents; see footnote 10 above.

¹⁹ This may for instance be done by referring to one's own website with a note and fine print equivalent to: "For further details, see www.forbrukerombudet.no/klima". It is important to refer the consumer to the specific page on climate neutrality, and not merely the trader's general website.

²⁰ These are available at www.forbrukerombudet.no/veiledninger as well as from the Consumer Ombudsman: post@forbrukerombudet.no or tel: +47 23 400 600.

- The Consumer Ombudsman's Guidelines on the Use of Environmental and Ethical Claims in Marketing (September 2009)
- The Consumer Ombudsman's Guidelines for Using Environmental Claims in Marketing of Energy for House Heating (1 March 2009)
- The Consumer Ombudsman's Briefing Letter on the Use of Environmental Claims in Marketing of Vehicles (3 September 2007)
- Norwegian Industrial Norm for Origin-Guaranteed Energy Contracts from Renewable Energy (17 April 2007)

These five documents address the use of environmental and climate claims for marketing that are not covered in these Guidelines.

6 Legal basis

Reference is made to sections 3.1 and 3.2 above, where it is stated that marketing shall be assessed from the perspective of the average consumer and that claims shall be documentable.

These Guidelines are developed with basis in the Marketing Control Act (MCA), sections 2, 6, 7 and 8.

Claims such as "climate neutral" may be in conflict with good marketing practice; cf. MCA section 2, first paragraph.²¹

Furthermore, unfair marketing is prohibited; cf. MCA section 6, first paragraph.

Marketing shall always be considered unfair and prohibited if it is misleading according to MCA section 7. Whether marketing is misleading depends on whether it contains false information, or if it is otherwise likely to mislead consumers; cf. section 7, first paragraph, letters a-h.

Of particular importance in this context are MCA section 7, first paragraph, letters a and b, concerning such topics as the nature and main characteristics of the service/product. Benefits, composition and origin are three of the examples of main characteristics listed in letter b. Claims such as "climate neutral" may in the Consumer Ombudsman's view be in conflict with section 7, first paragraph, letter a and/or b.

Misleading omissions in marketing as mentioned in MCA section 8 are unfair and prohibited; cf. MCA section 6, fourth cf. first paragraph. Misleading omissions occur if the marketing omits or hides material information that the consumers need to take a transactional decision, or the information is presented in an unclear, unintelligible, ambiguous or untimely manner; cf. section 8, first paragraph, first point.

²¹ See Proposition No. 55 to the Odelsting (2007-2008), p. 43 and p. 188 with further reference to environmental considerations and general environmental reasoning in this context.

In the assessment of whether information has been omitted, assessments of space or time limitations of the media used shall be taken into consideration, along with any measures taken by the trader to make the information available to consumers by other means; cf. section 8, first paragraph, second point. Regardless, the trader shall ensure that the consumer gets a rightful impression of the offer or service/product, so that insufficient information is not given, and section 8, first paragraph, second point does not exempt the trader from the duty to inform the consumer of significant restrictions on the offer.²²

A common term in sections 7 and 8 is that the marketing must be likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

Insufficient information on what is implied by claims such as “climate neutral” etc. may in the view of the Consumer Ombudsman be a misleading omission, in conflict with section 8.

According to the general provision in MCA section 6, second paragraph, marketing is unfair and prohibited if it is contrary to the requirements of professional diligence towards consumers, and is likely to materially distort their economic behaviour such that they reach decisions they would otherwise not have reached; cf. section 6, first paragraph. Claims such as “climate neutral” etc. in marketing may also be assessed according to this provision.²³

²² See Proposition No. 55 to the Odelsting (2007-2008), p. 55 and p. 196.

²³ In that respect, see Proposition No. 55 to the Odelsting (2007-2008), p. 188.